

# **WEST VIRGINIA LEGISLATURE**

## **2019 FIRST SPECIAL SESSION**

**Introduced**

**Bill Number**

By ENTER SPONSORS HERE

1A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new  
2 section, designated §11-21-12k; and to further amend said code by adding thereto a  
3 new section, designated §11-24-6b, all relating generally to establishing tax incentive for  
4 new business activity in qualified opportunity zones; defining terms; establishing  
5 eligibility requirements; specifying duration of tax benefit; providing for termination of  
6 program; providing for rule making authority; and specifying effective dates.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 11. TAXATION.**

### **ARTICLE 21. PERSONAL INCOME TAX.**

#### **§11-21-12k. Decreasing modification reducing federal adjusted gross income for the net income of Qualified Opportunity Zone Businesses; effective date.**

7 (a) General. -- In addition to the amounts authorized to be subtracted from federal  
8adjusted gross income pursuant to §11-21-12(c) of this code, a modification reducing federal  
9adjusted gross income is hereby authorized for taxable years beginning on and after January 1,  
102019:

11 (1) For individuals: in an amount equal to and limited to that portion of net income  
12included in federal adjusted gross income by a taxpayer in the taxable year that is directly  
13derived from a qualified opportunity zone business located in a qualified opportunity zone which  
14is located in West Virginia;

15 (2) For partners or members of limited liability companies that are treated as  
16partnerships for federal income tax purposes, and other pass-through entities: in an amount  
17equal to and limited to that portion of the distributive share of the partner or member that is  
18attributable to the flow through income directly derived from the qualified opportunity zone  
19business located in West Virginia. A similar rule applies to shareholders in corporations taxed  
20under subchapter S of the Internal Revenue Code.

21 (b) Eligibility. -- To be entitled to modification provided for in subsection (a) of this  
22section, the qualified opportunity zone business must be a newly registered business in West  
23Virginia registered on or after January 1, 2019. Limited liability companies that are treated as  
24corporations for purposes of the federal income tax and West Virginia corporation net income  
25tax and which otherwise qualify in accordance with the requirements and limitations of this  
26section may qualify for the modification authorized under this section.

27 (c) Duration. -- The modification provided for in subsection (a) of this section shall apply  
28with respect to a taxpayer for a 10-year period beginning with the first full taxable year during  
29which the qualified opportunity zone business first qualifies as a qualified opportunity zone  
30business, or the first year in which the qualified opportunity zone business reports net income:  
31Provided, That the qualified opportunity zone business first qualifies as such on or after January  
321, 2019.

33 (d) The following definitions apply to this section:

34 (1) "Internal Revenue Code" means the Internal Revenue Code of the United States as  
35defined in §11-21-9 or §11-24-3 of this Code.

36 (2) "Newly registered business" means a business that is formed on or after January 1,  
372019 that is first required to obtain a business registration certificate under §11-12-1 et seq. of  
38this code from the Tax Commissioner on or after January 1, 2019 and which is not the  
39reorganization of a business that existed prior to January 1, 2019.

40 (3) "Reorganization of an existing business" includes but is not limited to a change in the  
41name of a business, a change in the form of doing business such as, but not limited to, a  
42proprietorship that reorganizes as a partnership or other business entity, a subsidiary that  
43becomes a stand-alone business entity, a division of an existing business that becomes a  
44separate business and any other similar type of business reorganization. For purposes of this  
45definition any entity or organization that is determined by the Tax Commissioner to be an alter

46ego, nominee or instrumentality of an existing or previously existing business, as  
47determined in accordance with the criteria specified in section 11-12-5 of this code is a business  
48resulting from reorganization of an existing business.

49       (4) "Qualified Opportunity Zone Business" means Qualified Opportunity Zone Business  
50as that term is defined in Section §1400Z-2 of the Internal Revenue Code.

51       (5) "Qualified Opportunity Zone" means Qualified Opportunity Zone as that term is  
52defined in Section 1400Z-1 of the Internal Revenue Code.

53       (e) Rules -- The Tax Commissioner may propose legislative rules, or promulgate  
54interpretive or procedural rules, as the Commissioner deems necessary to carry out the  
55provisions of this section and to provide guidelines and requirements to ensure uniform  
56administrative practices statewide to affect the intent of this section. All rules shall be  
57promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

58       (f) Effective date; expiration of modification, preservation of entitlement. -- The  
59modification authorized by this section becomes effective and is authorized for taxable years  
60beginning on and after January 1, 2019: *Provided*, That unless sooner terminated by law, the  
61modification authorized by this section will terminate for taxable years beginning on and after  
62January 1, 2024, and no new entitlement to the modification is authorized thereafter; *Provided*  
63however, That those taxpayers that have lawfully gained entitlement to the decreasing  
64modification specified in this section during that period commencing in taxable years beginning  
65on and after January 1, 2019 and terminating for taxable years beginning on and after January  
661, 2024, shall retain that entitlement for the remainder of the 10-year application period  
67over which the original entitlement applies, if the Taxpayer otherwise remains in compliance  
68with the requirements of this section.

#### **ARTICLE 24. CORPORATION NET INCOME TAX.**

**§11-24-6b. Decreasing modification reducing federal taxable income for the income of  
Qualified Opportunity Zone Businesses; effective date.**

69        (a) General. -- In addition to the amounts authorized to be subtracted from federal  
70 taxable income pursuant to §11-24-6(c) of this code, there shall be subtracted from federal  
71 taxable income, an amount equal to net income included in federal taxable income by a  
72 corporate taxpayer in a taxable year that is ordinary income derived from a qualified opportunity  
73 zone business located in a qualified opportunity zone located in West Virginia.

74        (b) Eligibility. -- To be entitled to modification provided for in subsection (a), the qualified  
75 opportunity zone business must be a newly registered business in West Virginia registered on or  
76 after January 1, 2019. Limited liability companies that are treated as corporations for purposes  
77 of the federal income tax and West Virginia corporation net income tax and which otherwise  
78 qualify in accordance with the requirements and limitations of this section may qualify for the  
79 modification authorized under this section.

80        (c) Duration. -- The modification provided for in subsection (a) of this section shall apply  
81 with respect to a taxpayer during the 10-year period beginning with the first full taxable year  
82 during which the qualified opportunity zone business first qualifies as a qualified opportunity  
83 zone business, or the first year in which the qualified opportunity zone business reports net  
84 income: Provided, That the qualified opportunity zone business first qualifies as such on or after  
85 January 1, 2019.

86        (d) The following definitions apply to this section:

87        (1) "Newly registered business" means a business that is formed on or after January 1,  
88 2019 that first required to obtain a business registration certificate under §11-12-1 et seq. of this  
89 code from the Tax Commissioner on or after January 1, 2019 and which is not the  
90 reorganization of a business that existed prior to January 1, 2019.

91        (2) "Reorganization of an existing business" includes but is not limited to a change in the  
92 name of a business, a change in the form of doing business such as, but not limited to, a

93proprietorship that reorganizes as a partnership or other business entity, a subsidiary that  
94becomes a stand-alone business entity, a division of an existing business that becomes a  
95separate business and any other similar type of business reorganization. For purposes of this  
96definition any entity or organization that is determined by the Tax Commissioner to be an alter  
97ego, nominee or instrumentality of an existing or previously existing business, as  
98determined in accordance with the criteria specified in section 11-12-5 of this code is a business  
99resulting from reorganization of an existing business.

100       (3) "Qualified Opportunity Zone Business" means Qualified Opportunity Zone Business  
101as that term is defined in Section 1400Z-2 of the Internal Revenue Code.

102       (4) "Qualified Opportunity Zone" means Qualified Opportunity Zone as that term is  
103defined in Section 1400Z-1 of the Internal Revenue Code.

104       (e) *Rules* -- The Tax Commissioner may propose legislative rules, or promulgate  
105interpretive or procedural rules, as the Commissioner deems necessary to carry out the  
106provisions of this section and to provide guidelines and requirements to ensure uniform  
107administrative practices statewide to affect the intent of this section. All rules shall be  
108promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

109       (f) *Effective date; expiration of modification, preservation of entitlement.* -- The  
110modification authorized by this section becomes effective and is authorized for taxable years  
111beginning on and after January 1, 2019: *Provided*, That unless sooner terminated by law, the  
112modification authorized by this section will terminate for taxable years beginning on and after  
113January 1, 2024, and no new entitlement to the modification is authorized thereafter; *Provided*  
114however, That those taxpayers that have lawfully gained entitlement to the decreasing  
115modification specified in this section during that period commencing in taxable years beginning  
116on and after January 1, 2019 and terminating for taxable years beginning on and after January  
1171, 2024, shall retain that entitlement for the remainder of the 10-year application period

118over which the original entitlement applies, if the Taxpayer otherwise remains in compliance  
119with the requirements of this section.

NOTE: The purpose of this bill is to create a decreasing modification for personal income tax and corporation net income tax for income derived from businesses activity in qualified opportunity zones in West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.